HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.244 of 2003

Abdul Gani S/o late Mazeed
R/o village Nagla Khurd
P.S. Laksar
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Gani S/o Abdul Hameed
3. Abbas S/o Abdul Mazeed
   Both R/o village Nagla Khurd
   P.S. Laksar
   District Haridwar .....Respondents

Sri Vivek Shukla learned counsel for the applicant.
Sri Rajeev Mohan learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for setting aside the impugned order dated 11.9.2003 passed by the Sessions Judge, Haridwar in criminal revision No.98/2002. It was further prayed to uphold the summoning order dated 23.1.2002 passed by the Judicial Magistrate, Roorkee in criminal case No.852/2001.

2) Brief facts of the case are that on 10.2.1997 at about 11:30p.m. an FIR was lodged at police station Laksar, District Dehradun by one-Roda, Chowkidar of the village Nagla Khurd alleging therein that the brother of the applicant Akbar @ Madu was trying to extort the money illegally from one Gani on the same day at about 5:30p.m. It was further alleged that Akbar @ Madu armed with a countrymade pistol came to the house of Ghulam Rasool and fired at Gulam Rasool and other persons. The villagers chased Akbar @ Madu and

apprehended him by using necessary force by which Akbar sustained the injuries. The villagers tried to save him and while bringing him to hospital he succumbed to his injuries. On the basis of the written report, the case was registered as case crime No.20/1997 under section 386/307 I.P.C. The police investigated the matter and submitted the final report on 15.2.1997. Feeling aggrieved by the final report, the applicant filed a protest petition before the Magistrate. But, the Magistrate rejected the same and accepted the final report vide its order dated 13.5.1998. Feeling aggrieved by the said order, the applicant preferred a revision before the Ist Addl. Sessions Judge, Haridwar. The Ist Addl. Sessions Judge remanded back the matter and directed the Magistrate to pass a reasoned under section 200 & 202 Cr.P.C., postmortem report, panchayatnama and other submission of the protest petition. Thereafter, the Magistrate rejected the final report and took cognizance vide order dated 23.01.2002.

3) Feeling aggrieved by the said order, the respondent No.2 & 3 (Gani and Abbas) preferred a revision before the Sessions Judge. On 11.9.2003 the Sessions Judge has allowed the revision and set aside the order dated 23.01.2002 by which the Magistrate has rejected the final report. Feeling aggrieved by the order dated 11.9.2003, the present petition has been filed.

4) Heard Sri Vivek Shukla learned counsel for the applicant and Sri Rajeev Mohan learned A.G.A. None appeared for the respondent No.2 & 3 despite service.

5) It is well settled position of law that when the final report is submitted before the Magistrate, the Magistrate can either to summon the accused on the basis of the investigation report or to accept the final report. Before taking cognizance on the basis of the final report, the Magistrate has another option, if he feels that if he requires further evidence it can be taken up as a complaint case, the court can proceed under sections 200 & 202 Cr.P.C. Instead of going through the statement recorded under section 161 Cr.P.C. the Magistrate decided to treat the protest petition as a compliant case. The Magistrate took cognizance after going through the judgment of the Sessions Judge. It is pertinent to mention here that while taking cognizance the Magistrate had not to examine the prosecution evidence meticulously. The Magistrate had to see whether there is a prima facie case against the accused or not. He has to satisfy himself that whether the witnesses are genuine or not. The Magistrate or the revisional court has no power to assess the evidence as if they are sitting as a trial court. It is not required for the learned Magistrate and the revisional court that they will discuss the evidence as they are concluding a trial and after evaluation of the evidence, recording the conviction and acquittal.

6) The learned Sessions Judge has entered into the controversy and has weighed the evidence as if he is sitting as a trial judge. The Ist Addl. Sessions Judge has also assessed the evidence meticulously and he has taken the aspect as to whether it is a case of self-defence or not. The Magistrate took cognizance on the basis of the order passed by the Ist Addl. Sessions

Judge and the Magistrate was influenced with the order of the Ist Addl. Sessions Judge. The Ist Addl. Sessions Judge has observed that the theory of self-defence was not in accordance with law. Though this power does not vest with the Ist Addl. Sessions Judge. In view of the foregoing discussion, it would be just and proper to direct the court below to examine the matter afresh and take its own decision with regard to the cognizance without influencing the order of the revisional court.

7) The impugned order dated 11.9.2003 passed by the Sessions Judge, Haridwar in criminal revision No.98/2002 and the summoning order dated 23.1.2002 passed by the Judicial Magistrate, Roorkee in criminal case No.852/2001 are set aside. Therefore, the matter is remanded back to the Magistrate. The Magistrate is directed to decide the matter afresh withtout influencing the order of the revisional courts.

8) The petition is disposed of accordingly.

(J.C.S.RAWAT, J.)

Dated 21.03.2006

LSR